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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,107	11/16/1999	NED HOFFMAN	STA-22	3861
20575	7590	05/15/2006	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			FISCHETTI, JOSEPH A	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/441,107

Applicant(s)

HOFFMAN, NED

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,6,7,16,22 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7,16,22 and 45-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/23/06</u> | 6) <input type="checkbox"/> Other: _____  |

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***Double Patenting***

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6269348, 5870723 and 5838812. Although the conflicting claims are not identical, they are not patentably distinct from each other because at least claim 1 of the identified patents can be read on claim 1 of this application in the manner set forth below.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2,4,6,7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the code is an additional biometric to a physical sample or whether the code is the only biometric involved. If so, it is unclear in claim 6 just how other codes get compared as there can be just one code for one supporter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,16,22,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merjanian 471.

Merjanian disclose with respect to the authentication system for use with a computer terminal col. 9 or the example of the welfare or Medicaid recipient of col.11 lines 1-21, which do not involve a smart card and thus, is "tokenless";

receiving a scrip supporter bid biometric sample (col. 9 lines 41,42 finger print data is conveyed via interface 40 to data base 24 for the supporter who is read as the medicaid recipient, a scrip supporter registers with an electronic identicator at least one registration biometric sample (see col. 9 lines 31-33, fingerprint data must match predetermined parameters which parameters inherently require the step of registration); and a scrip donator identification step read as Medicaid who controls the account;

comparing the scrip supporter bid biometric sample with at least one registration biometric sample from the scrip supported for producing either a successful or failed identification of the scrip supporter Col. 9, line 33 a match is sought against the two data for the finger prints);

upon successful identification of the scrip supporter, settling a scrip transaction by debiting an account of a scrip donator (scrip donator is read as the Medicaid which debits the health account [obvious variant of debit being at a minimum, the lessening of

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future benefits] of the donator in favor of crediting the account of the beneficiary (i.e. the health service provider)).

Regarding the limitations of electronic script, the use of food stamps and/or health account credits is read as the use of an electronic script or its obvious equivalent. Terms, i.e., donator, supporter are all terms which are met by the Medicaid embodiment of Merjanian without recitation of contrary definitions in the claims.

Re claim 16: Medicaid accounts are determined to see if sufficient coverage exists before services are rendered.

Re claim 22: Merjanian teaches fingerprint recognition.

Claims 2,4,6,7,45,46,47,48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merjanian as applied to the claims above, and further in view of Himmelstein. Himmelstein discloses the use of both an ID code and physical biometrics to effect an on/off condition in a hardware device with security concerns. It would be obvious to modify the device in Merjanian to include the dual biometric component system of Himmelstein the motivation being further assurance that the person is who the code says s/he is.

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Re claim 4: The plurality of the sample from a plurality of users is natural result of plural users.

RE claim 6: the ID code associated with the user in Himmelstein caused the voice scan to be made against the voice in the database.

Re claims 16/24/28: the Medicaid account is read as the donor account and is the scrip service merchant which gets presented the results of the transaction.

Re claim 19/25: food stamp purchase inherently logs date and time information and dollar value.

Any inquiry concerning this communication should be directed to Joseph A. Fischetti at telephone number (703) 305-0731.

  
JOSEPH A. FISCHETTI  
PRIMARY EXAMINER  
Joseph A. Fischetti  
Primary Examiner  
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